

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, ex rel.
JOHN M. GREABE,

 Plaintiffs,

 v. Civil Action No. 04-11355-MEL

BLUE CROSS BLUE SHIELD ASSOCIATION
and
ANTHEM BLUE CROSS BLUE SHIELD
OF NEW HAMPSHIRE,

 Defendants.

DEFENDANTS' JOINT MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), Defendants Blue Cross Blue Shield Association and Anthem Blue Cross Blue Shield of New Hampshire (collectively, “Defendants”) respectfully move to dismiss the Amended Complaint filed by relator John M. Greabe (the “Relator”). Defendants move to dismiss the Amended Complaint on two independent grounds: (1) that the False Claims Act (31 U.S.C. §§ 3729 *et seq.*) violations it pleads are precluded by the Federal Employees Health Benefits Act (5 U.S.C. §§ 8901-8914) and the United States Office of Personnel Management’s exclusive control over benefits paid and carriers’ conduct under that Act, and (2) that it fails to plead any False Claims Act violation with the particularity required by Fed. R. Civ. P. 9(b). In support of this Motion, Defendants submit the accompanying Memorandum in Support of Defendants’ Motion to Dismiss Amended Complaint.

WHEREFORE, Defendants respectfully ask this Court to allow the Defendants' Motion to Dismiss the Amended Complaint and to dismiss the Amended Complaint with prejudice.

Certification of Counsel

Pursuant to Local Rule 7.1A(2), undersigned Defendants' counsel certifies that he has conferred with the opposing counsel prior to the filing of this dispositive motion. The Relator's counsel indicated that the Relator would oppose the dispositive motion and the parties agreed upon a briefing schedule.

Dated: February 28, 2006

Respectfully submitted,

/s/ Nicholas J. Nesgos
Nicholas J. Nesgos, BBO No. 553177
nnesgos@pbl.com
Jennifer Finger, BBO No. 641830
jfinger@pbl.com
Posternak Blankstein & Lund LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199-8004
Telephone: (617) 973-6100
Fax: (617) 367-2315

Anthony F. Shelley
ashelley@milchev.com
Adam P. Feinberg
afeinberg@milchev.com
Miller & Chevalier Chartered
655 15th St., NW
Suite 900
Washington, DC 20005
Telephone: (202) 626-6800
Fax: (202) 628-0858

*Counsel for Defendant Blue Cross Blue
Shield Association*

/s/ _____ Lawrence M. Kraus
Michael J. Tuteur, BBO No. 543780
mtuteur@foley.com
Lawrence M. Kraus, BBO No. 564561
lkraus@foley.com
Foley & Lardner LLP
111 Huntington Avenue
Boston, MA 02199
Telephone: 617-342-4000
Fax: 617-342-4001

*Counsel for Defendant Anthem Blue Cross
Blue Shield of New Hampshire*

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Defendants' Joint Motion to Dismiss Amended Complaint to be served electronically on the following on this 28th day of February, 2006:

James A. Brett, Esquire
Wilson, Dawson & Brett
21 Customs House Street
Boston, Massachusetts 02110

William J. Hardy, Esquire
William J. Hardy Law Offices
1140 Nineteenth Street, N.W.
Washington, D.C. 20036

Patricia M. Connolly, Esquire
Assistant United States Attorney
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

Michael F. Hertz, Esquire
Joyce R. Branda, Esquire
Tracy L. Hilmer, Esquire
U.S. Department of Justice
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, DC 20044

/s/ Nicholas J. Nesgos
Nicholas J. Nesgos